

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MINDEN PICTURES, INC., :

Plaintiff, :

-against- : **ANSWER**

LABATON SUCHAROW LLP, :

Defendant. :

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Defendant, Labaton Sucharow LLP ("Labaton Sucharow"), by its attorneys, Ganfer Shore Leeds & Zauderer LLP, for its Answer to the Complaint, states and alleges as follows:

1. Labaton Sucharow denies the allegations of paragraph 1 of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2.
3. Denies the allegations of paragraph 3, except admits that Labaton Sucharow is a New York limited liability partnership with its principal place of business located at 140 Broadway, New York, New York 10005.
4. The allegations of paragraph 4 constitute legal conclusions to which no response is required.
5. The allegations of the first sentence of paragraph 5 constitute legal conclusions to which no response is required. Denies the allegations of the second sentence of paragraph 5, except admits that Labaton Sucharow conducts business in this judicial district.
6. The allegations of paragraph 6 constitute legal conclusions to which no response is required.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 and respectfully refers the Court to the certificates of registration for their true and correct contents.

14. Denies the allegations of paragraph 14.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 and respectfully refers the Court to the screenshots for their true and correct contents.

16. Denies the allegations of paragraph 16.

17. Denies the allegations of paragraph 17.

18. Denies the allegations of paragraph 18.

19. Denies the allegations of paragraph 19.

20. Denies the allegations of paragraph 20.

21. Denies the allegations of paragraph 21.

22. Labaton Sucharow repeats and reallege all the foregoing responses as if fully set forth herein.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 and states that the allegations of paragraph 23 contain legal conclusions to which no response is required.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 and states that the allegations of paragraph 24 contain legal conclusions to which no response is required.

25. Denies the allegations of paragraph 25.

26. Denies the allegations of paragraph 26.

27. Denies the allegations of paragraph 27.

28. Denies the allegations of paragraph 28.

29. Denies the allegations of paragraph 29.

30. Denies the allegations of paragraph 30.

31. Denies the allegations of paragraph 31.

32. Denies the allegations of paragraph 32.

33. Labaton Sucharow repeats and realleges all of the foregoing responses as if fully set forth herein.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34.

35. Denies the allegations of paragraph 35.

- 36. Denies the allegations of paragraph 36.
- 37. Denies the allegations of paragraph 37.
- 38. Denies the allegations of paragraph 38.
- 39. Denies the allegations of paragraph 39.
- 40. Denies the allegations of paragraph 40.
- 41. Denies the allegations of paragraph 41.
- 42. Denies the allegations of paragraph 42.

#### **FIRST DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

#### **SECOND DEFENSE**

Plaintiff's claims are barred, in whole or part, to the extent any copyright registration asserted by Plaintiff as covering the subject photograph, and/or any purported assignment of rights to Plaintiff concerning the subject photograph, is invalid or unenforceable.

#### **THIRD DEFENSE**

Plaintiff's claims are barred, in whole or part, to the extent that Plaintiff lacks standing or capacity to assert them.

#### **FOURTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of fair use and/or because any use of the subject photograph on Labaton Sucharow's website was *de minimis*.

#### **FIFTH DEFENSE**

Plaintiff is not entitled to recover actual damages because Plaintiff suffered no actual damages as the result of any alleged infringement.

**SIXTH DEFENSE**

Plaintiff is not entitled to recover any of Labaton Sucharow's profits because Labaton Sucharow did not receive any revenues or profits attributable to any alleged infringement.

**SEVENTH DEFENSE**

Plaintiff is not entitled to recover any statutory damages, or in the alternative, is entitled to recover only the minimum amount of statutory damages.

**EIGHTH DEFENSE**

Plaintiff's claim for statutory damages is barred or limited, in whole or in part, because any alleged infringement was not willful.

**NINTH DEFENSE**

Plaintiff is not entitled to punitive or exemplary damages.

**TENTH DEFENSE**

Plaintiff is not entitled to an award of attorneys' fees.

**ELEVENTH DEFENSE**

Plaintiff's claims for damages are barred or limited, in whole or in part, to the extent that such damages would be excessive, unreasonable, disproportionate to any actual injury or lack of injury suffered by Plaintiff, and/or in violation of the Due Process Clause of the United States Constitution.

**TWELFTH DEFENSE**

Plaintiff's claim for injunctive relief is barred as unnecessary because the subject photograph has been permanently removed from Labaton Sucharow's website.



**THIRTEENTH DEFENSE**

Plaintiff's Digital Millennium Copyright Act (DMCA) claim is barred by Labaton Sucharow's lack of scienter.

**FOURTEENTH DEFENSE**

Plaintiff's DMCA claim is barred to the extent that copyright management information was not included with respect to the subject photograph.

**FIFTEENTH DEFENSE**

Plaintiff's claims are barred or limited, in whole or in part, by the applicable statutes of limitations.

**SIXTEENTH DEFENSE**

Plaintiff's claims are barred or limited, in whole or in part, by the doctrines of laches, estoppel, unclean hands, waiver, implied waiver, or other equitable defenses.

**RESERVATION OF RIGHTS**


Labaton Sucharow expressly reserves its right to assert additional defenses. By asserting any of defenses set forth above or any additional defense, Labaton Sucharow does not assume the burden of proof with respect to such defense.

WHEREFORE, Defendant, Labaton Sucharow LLP, respectfully demands judgment dismissing the Complaint in all respects, and granting it such other and further relief as the Court may deem just and proper, including the costs, disbursements, and attorneys' fees of this action.

Dated: New York, New York  
July 11, 2022

GANFER SHORE LEEDS & ZAUDERER LLP

By: \_\_\_\_\_

  
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